United Nations A/HRC/28/83

General Assembly

Distr.: General
9 January 2015
English
Original: French

Human Rights Council
Twenty-eighth session
Agenda item 10
Technical assistance and capacity-building

Report of the Independent Expert on the situation of human rights in Mali, Suliman Baldo

Summary

In this report, which covers the period from 1 May to 29 December 2014, the Independent Expert gives an account of his third visit to Mali, from 7 to 17 October 2014. He notes with concern that the progress observed during his second mission, in February 2014, in terms of strengthening State authority, deploying the administration in the north of the country and combating impunity has been called into question following the fighting that broke out in Kidal from 16 to 21 May 2014. These events which rekindled the power struggle between the Government and rebel groups have had major political, security and humanitarian repercussions in the country as well as serious consequences for the human rights situation there.

Armed movements, including terrorist groups, are gradually regaining control of the north of the country and, for the first time, members of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) are being targeted by the jihadi groups. This extremely worrying situation is keeping humanitarian actors away from people living in northern Mali who are thus deprived of access to basic social services.

The Independent Expert notes the contrast, since his last report, between the marked decrease in cases of violations of the right to life attributable to the Malian armed forces and the significant increase in violations of human rights and of international humanitarian law by the different armed groups in northern Mali. The rape of minors by certain members of the Malian armed forces is the main source of concern.

Armed and extremist groups present in the north of Mali continue to be involved in violations of human rights: violations of the right to life, abductions, cruel, inhuman or degrading treatment, unlawful detention, the recruitment and use of children by armed groups, asymmetrical attacks and looting.

GE.15-00252 (E) 050215 060215

1500252

Please recycle

The fragile security situation in northern Mali is pushing many groups, formed most often on the basis of their identity, to acquire weapons to defend their communities. Against a background of intercommunal and intracommunal tensions, sometimes manipulated by political and security actors, the risk of serious human rights violations among the civilian population is especially worrying.

The Independent Expert notes the Government's efforts to reform the National Human Rights Commission so as to bring it into line with international standards as well as its efforts to establish mobile counselling centres to expedite judicial proceedings for crimes committed in the north of the country.

Regarding the peace process in Algiers, the Independent Expert emphasizes the importance of ensuring that any peace agreement comes under a legal framework in keeping with international human rights instruments, which means not granting amnesty to the perpetrators of international crimes such as genocide, crimes against humanity, war crimes and serious human rights violations, including sexual and gender-based violence. The Independent Expert stresses the fact that political arrangements often made to the detriment of victims of the serious human rights violations committed in Mali since the start of the crisis should not be a substitute for the rule of law.

Contents

		Paragraphs	*Page*
I.	Introduction	1–6	4
II.	General situation in the country	7–53	4
	A. The political situation	7–22	4
	B. The security situation	23–34	6
	C. The ongoing challenge of the fight against impunity	35–53	8
III.	The human rights situation	54–106	11
	A. Civil and political rights	54–78	11
	B. Intercommunal and intracommunal conflicts	79–82	14
	C. Violence against women	83–86	14
	D. The situation of children	87–91	15
	E. The prison situation	92–97	16
	F. Refugees and internally displaced persons	98–100	16
	G. The issue of slavery	101–102	17
	H. Economic, social and cultural rights	103–106	17
IV.	Conclusions and recommendations	107–113	18
	A. Conclusions	107–110	18
	B. Recommendations	111–113	18

I. Introduction

1. This report is submitted in accordance with Human Rights Council resolution 25/36, adopted on 28 March 2014, in which the Council renewed the mandate of the Independent Expert on the situation of human rights in Mali for one year with a view to assisting the Government of Mali in its efforts to promote and protect human rights, and requested him to submit his report at its twenty-eighth session.

2. In this report, which covers the period 1 May to 29 December 2014, the Independent Expert gives an account of his third visit to Mali, from 7 to 17 October 2014. The report is based on information collected from government authorities, United Nations bodies operating in the country, national and international organizations dealing with humanitarian issues and human rights, as well as on the testimonies of associations and families of victims of serious violations of human rights and international humanitarian law.

3. The Independent Expert wishes to thank the Government of Mali for facilitating his stay in the country and for having granted him access to all the national and local officials that he asked to meet. During the third mission, as with the two previous missions, the Independent Expert met with high-ranking officials, including the President of the Republic, the Minister of Justice and Human Rights, Keeper of the Seals, the Minister of Defence and Veterans' Affairs, the Minister of the Interior and Security, the Minister for Foreign Affairs and International Cooperation, the Minister for the Advancement of Women, Children and the Family, and the Minister of National Education.

4. The Independent Expert met with the Public Prosecutor, the Chief of Staff of the Armed Forces of Mali, the Secretary General of the Truth, Justice and Reconciliation Commission and the Chairperson of the National Human Rights Commission. He visited detention centres but could not go to the northern part of the country for security reasons.

5. The Independent Expert held talks with representatives of civil society, associations of victims in northern Mali and the association of parents and spouses of the "red beret" soldiers killed on duty, political parties, the diplomatic corps and United Nations bodies.

6. The Independent Expert wishes to thank David Gressly, Special Representative of the Secretary-General for Mali and Head of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), Arnauld Akodjènou, his deputy for political affairs, and the staff of the Human Rights Division of MINUSMA. The technical and logistical support from the United Nations system in Mali was essential for facilitating and ensuring the success of the Independent Expert's third mission.

II. General situation in the country

A. The political situation

7. In his first report, submitted to the Council on 25 March 2014, the Independent Expert welcomed the fact that Mali was gradually emerging from the severe, multidimensional crisis of the previous two years, which had brought the country to the brink of collapse. The gradual return to constitutional order and the significantly improved security situation in the north, as of the second half of 2013, had been made possible with the support of neighbouring countries and the international community, particularly MINUSMA and the countries of the Economic Community of West African States, as well as through the efforts of the Malian authorities to restore peace and stability in the country.

8. In 2013, the intervention by the African-led International Support Mission to Mali, and subsequently by MINUSMA and the French forces of Operation Serval, alongside the reconstituted Malian armed forces, led to the recapture of northern Mali from the control of extremist Islamist groups such as Al-Qaida in the Islamic Maghreb (AQIM), the Movement for Unity and Jihad in West Africa (MUJAO) and Ansar Dine.

9. A determining factor in the defeat of the extremist groups was the collapse of the alliance of convenience, which initially united the Malian Tuareg and Arab groups campaigning for autonomy or independence, and the subsequent involvement of those groups in the campaign against the jihadi groups.

10. This cooperation resulted in the conclusion of a preliminary agreement on presidential elections and inclusive peace negotiations in Mali, signed in Ouagadougou, on 18 June 2013, between the Transitional Government and the armed groups from the north. The agreement allowed elections to be held in favourable conditions across the whole country, with presidential elections on 28 July and 11 August 2013, and parliamentary elections on 24 November and 15 December 2013. The absolute majority polled by the party of President-elect Ibrahim Boubacar Keita, (Rassemblement pour Mali) with its allies would give significant parliamentary support to the President for his declared agenda of restoring peace, security and good governance. These advances laid the ground for political stability in the country in 2014.

11. Article 18 of the preliminary agreement of 18 June 2013 (Ouagadougou Preliminary Agreement) provides for the establishment of an international commission of inquiry into war crimes, crimes against humanity, crimes of genocide, sexual abuse and other serious violations of human rights and international humanitarian law perpetrated by the belligerents during the war in the north of the country. Article 21 of the Agreement provides that, after the presidential elections, and 60 days after the new Government has taken office, the Government will engage in peace talks with all the communities from the north, as well as the signatories and armed groups that are party to the Preliminary Agreement, with a view to reaching a comprehensive and lasting peace.

12. The considerable delay in implementing these important provisions of the Ouagadougou Preliminary Agreement by the newly elected authorities of Mali seriously threatened the greater political stability and improved security situation made possible by the Preliminary Agreement. A fragile truce prevailed among government troops and rebel groups in the north, while the representative of the rebel groups continued to meet with government officials in Bamako and elsewhere in neighbouring countries in an effort to relaunch the peace process with the support of MINUSMA. On the ground, real security problems persisted between the Malian armed forces and armed groups campaigning for independence, particularly in Kidal, the cradle of the Tuareg rebellion in Mali since its independence in 1960.

13. Another significant development on the political scene was the resignation, on 5 April 2014, of Prime Minister Oumar Tatam Ly. He was replaced by Moussa Mara, former presidential candidate and member of the Yelema party.

14. Efforts to relaunch the political process were seriously jeopardized by armed clashes that took place in Kidal, from 16 to 21 May 2014, between the Malian armed forces and the National Movement for the Liberation of Azawad (MNLA) supported by other associated armed groups. This violation of the ceasefire, in breach of article 10 of the Preliminary Agreement of Ouagadougou, brought a deterioration in the security situation and an increasingly fragile humanitarian and human rights situation for the civilian population.

15. A ceasefire agreement between the parties was signed, on 23 May 2014, following the intervention of the Mauritanian President, Mohamed Ould Abdel Aziz. The signatories to the agreement committed to revert to the provisions of the Ouagadougou Preliminary

Agreement and to immediately resume negotiations. The parties agreed that an international commission of inquiry should be set up to investigate the events in the north, starting with Kidal, and in accordance with the Preliminary Agreement.

16. The first round of negotiations, held from 14 to 24 July 2014 in Algiers, led to the adoption of a road map and a declaration of cessation of hostilities, signed by the Government of Mali with each of the two groups of armed coalitions: the Coordination (composed of MNLA, the Supreme Council for the Unity of Azawad (HCUA), the Arab Movement of Azawad (MAA)); the Platform (composed of Coordination des Mouvements et Forces Patriotiques de Résistance (CMFPR), Coalition du peuple pour l'Azawad (CPA), and another dissident faction of MAA).

17. A second round of negotiations began in early September between, the Government and the Coordination on the one hand, and the Government and the Platform on the other hand. The negotiations centred on four basic themes: policy, security, development, and justice and reconciliation issues. Two further rounds of negotiations were held in Algiers, on 20 October 2014 and from 20 November respectively.

18. The November session of the Algiers talks ended in stalemate as the positions of the Malian Government and Tuareg armed groups could not be reconciled. With their confidence boosted by the events of May in Kidal, the Tuareg armed groups are demanding full autonomy for the three northern regions: they would form one federal entity in a federation with the southern region and have their own parliament, judiciary and government. By so doing the movements are seeking to meet the expectations of independence among their popular support base, especially in Kidal, and to a lesser extent in the cities of Gao and Timbuktu.

19. For its part, the Government is proposing to the armed Tuareg movements an enhanced version of its policy of greater devolvement of decision-making on local affairs to regional and local authorities throughout the country.

20. On 30 November 2014, the draft agreement for peace and reconciliation in Mali was distributed to the parties by the mediation team and will be discussed at the next round of negotiations scheduled for January 2015. The question of the degree of autonomy that should be given to the regions of northern Mali and ensuring security in this part of the country are likely to dominate the public debate in the coming months.

21. It was against this political background that the third visit of the Independent Expert to Mali took place. During his discussions with political actors involved in the Algiers talks, he drew their attention to the importance of ensuring that any peace agreement comes under a legal framework in keeping with international human rights instruments, which means not granting amnesty to the perpetrators of international crimes such as genocide, crimes against humanity, war crimes and serious human rights violations, including sexual violence and gender-based violence.

22. For this reason, the Independent Expert welcomes the publication, on 27 August 2014, of the human rights organizations' manifesto for a peace agreement that respects victims' rights. The document recalls that political negotiations are necessary to reach a final and inclusive peace agreement that respects national unity and the rights of victims to justice, truth and reparation, as recognized in international and national instruments.

B. The security situation

23. These political and diplomatic developments seriously hampered the progress that Mali had begun to make in late 2013 and early 2014, in the closely related tasks of ensuring security and re-establishing the administrative and judicial authorities in the northern

region, as well as basic social services in the State. Efforts to restore the rule of law throughout the country, particularly in the regions worst affected by the conflict in the north, obviously suffered a considerable setback.

24. The jihadi movements took advantage of the authorities' delay in relaunching the final peace talks and re-establishing civilian State authorities in northern Mali, the slowness with which MINUSMA deployed its forces in that region and the reconfiguration of Operation Serval into Operation Barkhane, which extends across the Sahel, to regroup themselves. Since then these groups have been waging asymmetric warfare with suicide attacks, improvised explosive devices, sometimes also rocket fire, first against the Malian armed forces and soldiers of Operation Serval, and more recently against the United Nations forces.

25. On account of this new vulnerable situation, at the time of the Independent Expert's third visit, MINUSMA already seemed to be one of the most deadly peacekeeping operations, with a total of 23 peacekeepers killed and 100 injured, including with disabling injuries.

26. Furthermore, the relationship between the Government and separatist groups in the north took a radical turn with the announcement of the visit of the Prime Minister and other senior officials of the Malian Government to Kidal in May 2014. On 16 May 2014, during a demonstration against the visit, a crowd of around 100 MNLA supporters threw stones and Molotov cocktails at members of the Malian Government's security forces and the United Nations police responsible for restoring public order at Kidal airport.

27. On 17 May 2014, the Prime Minister's delegation finally arrived in Kidal. The Prime Minister visited the camp of the Malian armed forces and went to the governorate for a meeting with officials from the regional authorities and community and civil society leaders from Kidal. Subsequently, heavy fighting broke out between armed elements of MNLA and the Malian armed forces for control of the Kidal governorate building.

28. The toll of the fighting, which ended with the seizure of the governorate by members of MNLA and HCUA, is a matter for concern: 11 deaths, including 8 civilians and 3 members of the Malian armed forces, 34 civilians in arbitrary detention and material damage. Following the clashes, the governorate was vandalized, stormed and looted by the members of MNLA and MAA, who were joined later by the civilian population. The Government of Mali, in a statement issued on 17 May 2014, described the events of Kidal as a declaration of war and promised that an appropriate response would follow. The Government condemned the killing of eight civilians and called for the establishment of an international commission of inquiry to shed light on the events.

29. On 21 May 2014, after fortifying its positions, the Malian army launched a military offensive against the MNLA, HCUA and MAA positions in Kidal. Light and heavy gunfire were used to take control of the town. After heavy fighting, lasting about three hours, armed groups took over the barracks of the Malian armed forces, forcing them to retreat out of Kidal. When the fighting ended 36 persons had been killed, including 32 members of the Malian armed forces and 4 members of the armed groups, and 93 had been wounded. Forty-five members of the Malian armed forces had been captured and were being held by armed groups; and administrative buildings and civilian homes had been vandalized and looted.

30. Such events have significantly worsened the security situation in the north, where Malian armed forces have retreated from their positions and terrorists and armed groups are gaining ground and still circulating and running their operations. This is compounded by banditry by armed groups, including militia forces and other unidentified groups.

31. Following these events and since the Algiers talks, the number of armed clashes has increased in northern Mali among the different members of the armed coalitions aligned with the two main parties in the peace process.

32. A typical example of this trend was the violent battle that took place near Tabankort in the Gao region, on 10 July 2014, between the alliance of pro-independence groups MNLA, HCUA and MAA, and the so-called loyalist Arab and Tuareg groups, including an MAA faction close to the Government, Tuareg soldiers from the Imghad tribe as well as members of CMFPR. Such factional fighting took place on 20 July in Tarkint, in *cercle* of Bourem, between MAA and MNLA factions.

33. Due to the resurgence of localized fighting, on 24 July, at the end of the first round of the Algiers talks, both parties set up a joint commission to be deployed in northern Mali with the assistance of MINUSMA so as to achieve a lasting cessation of hostilities between MNLA and MAA and factions of the same ethnic groups allied to the Government.

34. In spite of these many challenges, the Government has made progress in forging a national vision for the reform of the security sector. For example, on 14 August 2014, the Independent Expert was pleased to hear that a national council for the reform of the security sector had been established by presidential decree. The reform, which is part of the agenda for peace in Mali, will be essential for the modernization of its national defence and security forces.

C. The ongoing challenge of the fight against impunity

35. The inauguration of President Ibrahim Boubacar Keita, on 4 September 2014, ended a 16-month transitional period of disturbances, marked by the coup d'état of 22 March 2012 and the state of emergency declared between January and July 2013.

36. The Transitional Government gained notoriety through its contradictory actions in the fight against impunity. It submitted information relating to international crimes committed during the crisis in Mali to the International Criminal Court, yet it approved the promotion to general of the instigator of the coup d'état, Captain Amadou Haya Sanogo, who was suspected of direct involvement in committing those crimes.

37. Another legal loophole in the fight against impunity is article 18 of the Ouagadougou Preliminary Agreement, under which the parties commit to take appropriate confidence-building measures to facilitate the implementation of the Agreement and to release those detained in connection with the armed conflict.

38. The Malian Constitution of 1992, which is still in force, provides for an independent judiciary; but the judiciary is often subject to interference from the executive and corruption is commonplace.

39. In his report of March 2014, the Independent Expert praised the considerable efforts made by the Malian judiciary, which had demonstrated great courage and a certain independence by conducting investigations into serious crimes committed in the south of the country during the crisis, despite the modest logistical and material resources provided by the Government.

40 However, the Independent Expert drew attention to the fact that little or no headway had been made so far in the investigations into the war crimes and crimes against humanity perpetrated by all the belligerents in the north of the country.

41. This contrast has remained apparent since, as shown by the progress made in the investigation of the case of the missing "red beret" soldiers and the mutiny of September 2013; both events centred on the Kati military barracks, the headquarters of those involved

in the coup. Even before he had overseen the exhumation of the bodies of victims in two cases of enforced disappearances, in December 2013 and April 2014 respectively, the investigating judge responsible for the cases had sufficient evidence to order the arrest of General Sanogo, four senior officials from the former military junta and their associates. The defendants remain under arrest, pending the commencement of their trials. The Independent Expert met with representatives of the association of parents and spouses of the "red beret" soldiers killed at the Kati military barracks, who said that they were distraught and sad because, since the exhumation of their relatives' remains, the families were still waiting for the victims' bodies to be returned to them, in order to make funeral arrangements. The families also complained that they had not received any assistance from the military authorities, contrary to the provisions of the Malian army regulations.

42. The Independent Expert emphasizes that the Malian Government and military authorities had, in each instance, brought before the civilian judicial authorities the military personnel against whom warrants to appear had been issued, regardless of their military rank. This attests to the efforts being made in Mali to assert the control of the civilian authorities over the army and other security bodies.

43. However, war crimes and crimes against humanity committed as part of the conflict in the north continue to go largely unpunished. The Government established a special commission of inquiry into the murder of Malian soldiers in Aguelhok in 2012, but the members of that commission could not reach Aguelhok for security reasons and had to stop at Gao, where they met with the families of the victims. The commission has drawn up a list of survivors, widows and orphans, and has met with them, but it has not been able to conduct thorough investigations. It has submitted a progress report to the authorities.

44. The Independent Expert would like to commend the Malian human rights organizations and their international partners who have continued to remind the Malian authorities at the highest level that it is their duty to respect the right to justice and the right to compensation for the victims of such crimes and not to make those rights a bargaining chip in the political talks with armed groups. The organizations have and deplored the fact that no distinction has been made between political prisoners, criminals under ordinary law and persons suspected of war crimes or crimes against humanity.

45. Despite these calls, the Government of Mali has, over the last year, begun to release political detainees belonging to the armed groups, as it did in October 2013, invoking the confidence-building measures provided for in article 18 of the Ouagadougou Preliminary Agreement.

46. On 15 July 2014, the Government released 42 members of MNLA, HCUA and MAA, in exchange for 45 soldiers captured during the events that occurred in Kidal in May. Some of the individuals released had been charged with, or were under investigation for, their alleged roles in committing international crimes during the conflict in the north of the country.

47. On 15 August 2014, the Malian Government released Houka Houka Ag Alfousseyni, who, as a sharia court judge in Timbuktu, had allegedly been ruthless with the local population during the occupation of the city by jihadi groups. The court had ordered amputations, floggings and arbitrary arrests. The judge investigating the case had filed charges against Mr. Alfousseyni for his alleged role in committing those crimes.

48. These politically-motivated releases occurred at the same time as the competent investigating judges were holding the first round of hearings for a group of victims of international crimes committed in the north of Mali. The releases pose a security risk for the victims who are losing all confidence in their country's justice system. Victims' associations have expressed great concern because of the sense of fear among victims, who realize that their torturers are at liberty, and because of the resurgence of armed groups

which, once again, occupy much of the northern part of the country. This situation is all the more worrying as the Malian justice system does not provide for any witness or victim protection measures.

49. In response to Malian civil society organizations, the Independent Expert recalls that the confidence-building measures set out in article 18 of the Ouagadougou Preliminary Agreement are no justification for the politically-motivated release of alleged perpetrators of serious human rights violations. Such action is contrary to the international obligations of Mali and undermines the principle of the separation of powers enshrined in article 81 of the Malian Constitution of 25 February 1992.

50. The Independent Expert raised these issues during his meeting with the Minister of Justice and Human Rights, who highlighted the fact that: none of these releases has been decided definitively, as the procedures have not been completed; policy measures have been taken so as not to deprive the persons concerned of their liberty; and the Government will ensure that there is no statute of limitation for crimes committed by those released. The Minister informed the Independent Expert of the Government's efforts to renew investigations in the north of the country by establishing mobile counselling centres, which should be operational shortly.

51. The Independent Expert welcomes these efforts and the process of rebuilding the National Human Rights Commission so as to bring it into line with the Paris Principles. The Independent expert notes with satisfaction that, on 10 July 2014, and in accordance with article 18 of the Ouagadougou Preliminary Agreement, as well as the ceasefire agreement of 23 May 2014, the Malian Government sent a request for technical assistance to the Secretary-General of the United Nations with a view to the establishment of a commission to shed light on the serious violations of human rights and international humanitarian law committed between 1 January 2012 and the date of the commission's establishment. Such a commission, if provided with sufficient resources, is likely to give new momentum to efforts towards combating impunity in Mali.

52. The Independent Expert welcomes the appointment, on 9 June 2014, of the Secretary General of the Truth, Justice and Reconciliation Commission, following the adoption, on 20 March 2014, of the government bill to establish the Commission. With a mandate of three years, the Commission is entrusted with the task of shedding light on the serious human rights violations that took place in Mali between 1960 and 2013, as well as of encouraging reconciliation and consolidating national unity and democratic values.

53. Many of the persons consulted have expressed concerns about the independence of the Truth, Justice and Reconciliation Commission, which will come under the Ministry of National Reconciliation; there are also concerns that the Commission was established without prior consultation at a national level with the country's social and community leaders. There have been reports of a lack of transparency in the process for appointing members of the Commission. It should be noted that, as part of the political negotiations in Algiers, armed groups were invited to participate in the selection process for members of the Truth, Justice and Reconciliation Commission. Bearing that in mind, the Independent Expert draws attention the need to ensure that alleged perpetrators of human rights violations do not end up serving as members of the Commission.

III. The human rights situation

A. Civil and political rights

1. Human rights violations committed by the Malian armed forces

54. The Independent Expert has received reports of violations committed by the Malian armed forces. There have been eight incidents in which they have been implicated in this regard. They involve violations of the right to life and to physical integrity and cruel, inhuman or degrading treatment.

55. The Independent Expert notes that there has been a marked decrease in cases of violations of the right to life attributable to the Malian armed forces since his last report. The fact that they are stationed in different parts of the north could explain this development.

56. The most emblematic of the incidents took place in the town of Kidal, in which violent confrontations broke out between Malian armed forces and armed groups during the visit of the Prime Minister of Mali on 16 and 17 May 2014. On the morning of 21 May, fighting involving the use of heavy weapons took place between the Malian armed forces and the various armed groups present in the town. The fighting in and around the Kidal governorate building resulted in loss of life (of civilians and soldiers) and extensive material damage. The Malian armed forces reportedly carried out indiscriminate and disproportionate attacks, which caused harm to the civilian population in the town.

57. The Independent Expert notes that one person was killed by a member of the Malian armed forces in Gao's Quatrième Quartier, or Fourth District. The incident reportedly occurred during the night of 15 to 16 November 2014; at around 1 a.m., a Malian army lance corporal allegedly entered a bar with his weapon and began to check identity papers. During the identity check, he was said to have stripped the people present of their belongings and then opened fire, killing one person and wounding five others before he was overpowered and brought to the gendarmerie, where he was placed in detention in camp No. 1 of the Malian armed forces.

58. The Independent Expert notes with great concern the increasing number of rape cases involving minors committed by the Malian armed forces, particularly in the Gao and Timbuktu regions. He recalled the serious nature of such acts, which constitute one of the six grave violations against children in armed conflict.

59. The wave of rapes committed by elements of the Malian armed forces began on 9 May 2014, including the rape of a 14-year-old girl by two soldiers in the Château District of Gao. The two soldiers suspected of the rape have not faced any prosecution, which reinforces the sense of impunity within the army.

60. On 31 July 2014, a member of the Malian armed forces raped a 16-year-old girl of Arab descent in Timbuktu. The victim was provided with care by a doctor from the Central Emergency Response Fund in Timbuktu and Médecins sans frontières. The perpetrator was arrested; he is being held in solitary confinement in the military garrison pending a hearing by the military council with jurisdiction over such acts.

61. On 7 October 2014, a member of the armed forces of Mali raped an 11-year-old girl. According to the victim, she was at home when she was approached by a female neighbour. The neighbour then allegedly took her to a house located some 150 metres from her home, dragged her into a room where a man was waiting and closed the door as she left. The victim reportedly remained locked up for one hour with her torturer, who raped her. On the same day, the victim was taken to the hospital in Gao, where she received medical care and

psychosocial support from the non-governmental organization GREFFA, or Women's Action, Research, Study and Training Group. The perpetrator and his accomplice were arrested and are in detention.

62. On 11 November 2014, in Niafounké, 140 km from Timbuktu, a representative of the women's movement expressed her concern over reports of sexual harassment of girls from that community on the part of the Malian armed forces. In her view, the Malian armed forces were known to intimidate girls into granting them sexual favours. Despite the grave public concern over this issue, no member of the Malian armed forces has been called to account by his superiors.

63. The Independent Expert has also received reports of cases of cruel, inhuman or degrading treatment. On 2 November 2014, following an assault by the Malian army to liberate the village of Boulkessy, 20 persons were arrested and detained. During the transfer of the prisoners, human rights officers at the regional office in Mopti observed that some of them had marks that would suggest cruel, inhuman or degrading treatment. Some declared that they had been beaten by soldiers after their arrest. The victims reportedly received blows to the head and other parts of the body.

2. Human rights violations committed by armed groups

64. Extremist armed groups present in the north of Mali continue to be involved in human rights violations: violations of the right to life, abductions, cruel, inhuman or degrading treatment, unlawful detention, the recruitment and use of children by armed groups, asymmetrical attacks and looting. Asymmetrical attacks have claimed the lives of at least 28 persons, including 25 United Nations peacekeepers, and wounded at least 51, including 9 minors. The attacks were carried out in areas occupied by armed groups in the town of Kidal after the events of 21 May 2014.

65. On 16 May 2014, at the time of a demonstration by the opposition during the Malian Prime Minister's visit to Kidal, members of the government security forces and United Nations police were attacked, as indicated in paragraph 26 above.

66. On 17 May 2014, heavy fighting erupted during the meeting of the Prime Minister and his delegation with officials from the regional authorities and community and civil society leaders in Kidal and ended with the capture of the governate by elements of MNLA and HCUA, claiming the lives of 11 persons (8 civilians and 3 members of the Malian armed forces), the arbitrary detention of 34 civilians and causing material damage (see paras. 27 and 28 above).

67. There were reports of asymmetrical attacks, including 6 mine incidents, 3 incidents involving rocket and mortar fire, 2 suicide attacks and 20 incidents involving explosive ordnance. The region with the highest number of casualties from these attacks is Kidal, with a total of 23 attacks that claimed 15 lives and wounded 51 persons, including 3 minors. Next is the region of Gao, where there were 6 attacks to which 6 children fell victim. Lastly, 3 incidents were recorded in the Timbuktu region.

68. The Independent Expert notes with great concern the increase in the number of such attacks and their impact on children. On 29 July 2014, in Tihaoulalene in the Gao region, a 16-year-old boy of Arab descent was injured in his right hand by explosive devices. On 8 August 2014, two children were injured by explosive devices and taken to the Senegalese battalion infirmary based in Tabankort. They were later evacuated by helicopter, assisted by doctors, and cared for by a medical team from the International Committee of the Red Cross at the hospital in Gao. On 18 August 2014, an 8-year-old child was injured in Tabankort while playing with an explosive device. The victim lost the use of three fingers and sustained injuries to the arm and the head.

69. On the same day, a 10-year-old child belonging to the Arab community was injured when an explosive device went off in the Ezadjad area. The child was transported to the MINUSMA camp where he reportedly received first aid before being evacuated to the hospital in Gao on 21 August. On 4 October 2014, a 12-year-old member of the Arab community of Tabankort was seriously injured in the right hand while playing with an explosive device that he had picked up in the vicinity of Tabankort.

70. United Nations peacekeepers came under a number of rocket and mortar attacks in convoys and at the airport in Kidal. The deadliest attack against the United Nations in Mali took place on 3 October 2014. On that date, nine peacekeepers from the Niger were killed in an ambush by heavily armed men on motorcycles travelling between Ménaka and Ansongo in north-eastern Mali.

71. In accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Mali on 26 February 1999, the Independent Expert has received reports of inhuman and degrading treatment committed by armed groups. The Independent Expert is particularly concerned about the wave of offences committed by members of MNLA against the families of the Malian armed forces soldiers still present in Ménaka.

72. On 12 June 2014, a 30-year-old woman was beaten by three members of MNLA at the market in Ménaka. The victim reported that she had been brutally beaten by three individuals on the pretence that her husband was a member of the Malian armed forces based in Ansongo. She was called pro-Malian. This raises the larger question of how to protect the families of soldiers in towns occupied by armed groups.

73. On 6 July 2014, as part of its mandate to monitor the human rights situation in places of detention, the Human Rights Division of MINUSMA heard testimony from prisoners held by HCUA in Kidal. It raises concerns about the way in which certain HCUA combatants humiliated and showed contempt for the prisoners. This was clear from pictures they took using mobile phones, particularly while the prisoners were going to the toilet or taking showers, for the purpose of taunting them.

74. Acts of torture were committed during clashes between the pro-Government MAA and MNLA. For example, a combatant from the pro-Government MAA captured by MNLA, on 8 June 2014, in a village near Tabankort in the Gao region and detained at Intachdaite for 70 days was allegedly tortured in order to compel him to disclose information about the pro-Government MAA. MNLA combatants reportedly burned the victim's ears and genitals.

75. On 20 August 2014, following an exchange of prisoners between armed groups on 18 August, one of the four prisoners released by MNLA, a 45-year-old member of MAA, was taken to hospital. The person concerned had wounds which suggested that he had been bound by his wrists, which had affected his skin and flesh to the point that his bones were visible in places where he had been tied up. According to the doctor, this is a serious case that might require amputation of the affected limbs. It is allegedly the result of being tied up for long periods of time, an act that constitutes cruel treatment in a detention setting. The injured party has expressed his wish to make a formal complaint against the perpetrators. On the same day, in Ménaka in the region of Gao, six civilians were stopped at a barrier under MNLA control and severely beaten on the grounds that they were wearing T-shirts in the national colours of Mali.

76. The Human Rights Division of MINUSMA has recorded 68 illegal arrests and detentions carried out by armed groups in the regions of Kidal, Gao and Timbuktu. Most of the prisoners to whom the Human Rights Division of MINUSMA had access were either members of armed groups (17) arrested by their respective superiors on disciplinary

grounds or under ordinary law or civilians (29) arrested under ordinary law by the Coordination (coalition of MNLA, HCUA and MAA).

77. In Kidal and in Ber, the Coordination arrested and brought before the sharia courts not only civilians suspected of being spies or members of jihadi groups but also those suspected of fraud, theft, rape and murder. The other prisoners (22), to whom the Human Rights Division of MINUSMA did not have access, were members of armed groups arrested by an opposing group during the confrontations. In Kidal, in October 2014, the Coordination put in place a system for dealing with prisoners which differentiates between civilians and members of armed groups. Detentions on disciplinary grounds are handled separately by each of the three groups and persons detained for offences under ordinary law are grouped together in a single place visited by the Human Rights Division of MINUSMA, and the cases are referred to a sharia court for a decision.

78. During the period covered by this report, the Human Rights Division of MINUSMA recorded 39 releases carried out by the armed groups, including 16 in August as part of a prisoner exchange between one MNLA faction and MAA (Platform) and 5 releases of persons detained for disciplinary reasons. With respect to detentions for offences under ordinary law, 38 persons were released during the period under review, including 22 civilians and 16 members of armed groups, in proceedings conducted by a sharia court judge.

B. Intercommunal and intracommunal conflicts

79. The Independent Expert is concerned about the increasing number of intercommunal and intracommunal conflicts and human rights violations caused by these conflicts. During the reporting period, the Independent Expert was able to document at least seven deaths caused by these conflicts throughout northern Mali. These conflicts have different causes and affect almost all communities, in particular the Tuareg, Songhai and Arab communities.

80. Furthermore, in recent months the Independent Expert has observed another trend involving conflicts between armed groups often formed on the basis of their identity. The groups have sparked fighting which has brought about extensive civilian collateral damage.

81. On 27 July 2014, clashes between ethnic Tuareg, Daoussak and Ibretian communities were reported following the theft of livestock in Tankademi, in the *cercle* of Ménaka. The clashes left four dead and two injured. One of the injured persons was an MNLA member, a 28-year-old man from the Daoussak faction of Tamalelt, who was wounded in his right arm and left foot. The wounded were taken to the Referral Health Centre of Ménaka.

82. There are reports that on the night of 1 August 2014, three unidentified men wearing turbans and riding motorcycles burst into the Bella camp of Ebang Melen in Gossi; they opened fire on the residents of the camp, killing one man and critically wounding another, both of whom were from the Bella community. According to a local source in Gossi, the attack on the Ebang Melen camp is the result of a dispute between Bella and Tuareg shepherds. They reportedly wished to water their livestock near a water supply point located around the Ebang Melen camp. When members of the Bella community refused, those of the Tuareg community allegedly attacked the Bella camp.

C. Violence against women

83. The Independent Expert devotes special attention to violence against women in conflict situations and attaches priority to documenting such violence. During the reporting

period, the sexual crimes recorded tended to highlight the actions of Malian armed forces and civilians, as perpetrators. The Independent Expert notes with concern the difficulty of collecting information on sexual violence committed by armed groups, particularly in occupied areas. As this issue is still taboo in Mali, the available data might be masking the extent of the phenomenon.

84. On 9 November 2014, the Gommy Kondeye Association of Timbuktu organized a meeting in the district of Sankoré and gathered together 32 victims of conflict-related sexual violence. The purpose of the meeting was to come in contact with these women and discuss the establishment of a forum for dialogue on the transitional justice process in Timbuktu. According to the victims, they live in fear of reprisals by the alleged perpetrators who have been released, and they are stigmatized and cast out by the population. The feeling of impunity that the perpetrators supposedly enjoy seems to have grown among the population, particularly owing to the releases carried out as part of confidence-building measures related to the peace process. Nevertheless, the women in question have the right to justice and adequate reparation.

85. On 12 November 2014, the International Federation for Human Rights and Malian Association for Human Rights filed a complaint on behalf of 80 victims of rape and sexual violence during the occupation of the northern part of the country. The Independent Expert welcomes this initiative, which is in keeping with the fight against impunity

86. Early and/or forced marriages are still being reported, particularly in the regions of Timbuktu and Mopti. On 11 November 2014, the Association of Women Jurists of Mali in Niafounké indicated that it was aware of more than 150 victims of forced marriage and offences against the integrity of the person (rape and other acts of sexual violence).

D. The situation of children

87. The Independent Expert remains concerned about the harm suffered by children because of the conflict in Mali. In fact, children are the main victims of the crisis, as they are the most vulnerable and are often recruited and used by armed groups. Children are prey to sexual abuse and exposed to explosive remnants of war.

88. The Independent Expert has received reports that children have been recruited by extremist armed groups in some areas in the north of the country. Children have been seen at the side of armed groups in Ber, Ménaka, Intilit, Kidal, Aguelhok and Boulkessy, which lays them open to other consequences such as arrest. For example, nine children were detained in prisons in Bamako, in violation of the Protocol for the Release, Transfer and Protection of Children Associated with Armed Forces and Groups, which was signed by the Government on 1 July 2013 and which concerned all parties to the conflict in Mali.

89. On 1 August 2014, a 17-year-old boy from Gossi managed to slip from the hands of MUJAO in Tabankort. He stated that he had been abducted in 2012 by MUJAO in the region of Timbuktu and taken to Tabankort. He said that he had made several attempts to escape while he was in captivity within this group, which had all ended in failure. On 24 October 2014, armed groups in Timbuktu organized a meeting with young people in Ber. The MNLA Chief of Operations invited more than 50 youngsters from the Tuareg and Arab communities in Ber to the MNLA headquarters there with a view to mobilizing the young and asking them to make themselves available to the groups at the appropriate moment.

90. The Independent Expert recalls the principle that the parties to the conflict should not recruit or use children as combatants or support staff in hostilities. He also emphasized that such practices constitute one of the six grave violations against children in armed conflict.

91. The Independent Expert remains concerned about the adverse effects of explosive remnants of war on children. On 5 August 2014, in the village of Daki, the fingers of a 12-year-old boy from the Fulani community were blown off by the blast of an explosive device. Six other children were injured by explosive devices following confrontations in Tabankort.

E. The prison situation

92. During the reporting period, the Human Rights Division of MINUSMA recorded 92 conflict-related arrests made by government forces (soldiers and gendarmes), including 4 arrests involving persons who identified themselves as minors.

93. The de facto jurisdiction of the courts in Gao, Timbuktu and Mopti over conflict-related cases has been confirmed, as the Human Rights Division of MINUSMA recorded 90 arrests there (30 in Gao, 35 in Timbuktu and 25 in Mopti), and only 35 cases have been transferred to Bamako. However, no judgement of the Supreme Court was rendered to reverse the precedents transferring the cases from the aforementioned courts to the Court of First Instance of Commune III of Bamako. This thus raises the question of whether the arrests were legal.

94. After a lull in the number of arrests between June and September 2014 (fewer than 10 per month), a sharp increase in number was recorded in October (18) and especially in November (52), largely owing to the arbitrary arrest of groups of persons to carry out identity checks (24 recorded cases). Of the 92 persons arrested during the reporting period, 72 have been released and 20 are still in detention.

95. In addition, from 1 May to 3 December 2014, the Human Rights Division of MINUSMA recorded the release from custody of 196 prisoners: 82 concerned persons connected with an armed group or armed groups who were released under article 18 of the Ouagadougou Preliminary Agreement (mainly in June and July), while the releases ordered between October and December concerned persons arrested for the purpose of identity checks or on unfounded allegations.

96. The Human Rights Division of MINUSMA has recorded 174 conflict-related detainees, including 5 persons purported to be minors at the time of their arrest. The detainees include 88 persons in pretrial detention under a committal order, 7 convicted persons and 79 persons detained without a warrant. Thirty-four persons whose release has been requested by one or several armed groups are still in detention.

97. The Minister of Justice and Human Rights has affirmed the Government's desire to devote special attention to improving prison conditions in Mali, which are run-down and pose health and safety problems. The prisons were built during the colonial era and no improvements have been made since. Staff is insufficient and poorly trained.

F. Refugees and internally displaced persons

98. The Independent Expert had a productive meeting with the members of the Mali Protection Cluster, who highlighted the various challenges to the work of humanitarian actors, particularly the dwindling humanitarian space which is due to the deteriorating security situation and restricted access to communities in the north.

99. According to data collected by the Mali Protection Cluster, 2.5 million vulnerable people have been affected by the crisis in northern Mali and are in urgent need of protection, including 126,249 internally displaced persons, more than 200,000 returning refugees, 140,768 Malian refugees, and 32,425 spontaneous returnees and host

communities or vulnerable communities that have not been displaced. Population movements continue to occur along with the hostilities. The Government encourages refugees and internally displaced persons to return voluntarily to their regions of origin. The Independent Expert argues for the safe and dignified return of refugees and internally displaced persons to their communities.

100. However, the deteriorating security situation in the north, intercommunal violence and the threat of false accusations discourages people from returning.

G. The issue of slavery

101. The Independent Expert has received reports of the persistence of slavery in Mali. Between July and August 2014, the non-governmental organization Temedt, with the support of the American Bar Association Rule of Law Initiative (ABA ROLI), recorded 35 cases of slavery in the village of Labbezanga and 32 in Gossi. Before the fall of the city of Gao in 2012, ABA ROLI had managed to provide legal aid to 18 persons in situations of slavery through the Al Haq Legal Clinic. Given that slavery is not a punishable offence under the criminal legislation of Mali, eight of the persons who received counsel had filed complaints for slavery-related offences under the Criminal Code, in particular kidnapping, unlawful confinement and rape.

102. The Independent Expert notes with concern that the legislative framework of Mali does not provide for criminal penalties for acts of slavery. Therefore, despite the promulgation of Act No. 2012-023 on Combating Human Trafficking and Related Practices, slavery, including descent-based slavery, is still practised, especially in the north of Mali.

H. Economic, social and cultural rights

103. The Independent Expert notes with concern that armed groups occupy schools in the three regions in the north. In late 2014, they held a total of 14 school buildings: 2 schools in Ménaka; a school in Intilit; a school in Tessalit; a lycée in Kidal; 2 schools in Aguelhok; a primary school in Tabankort; a school in Lerneb; a school in Boulkessy, occupied by MAA and HCUA; and 4 new schools in the Gao and Timbuktu regions, occupied respectively by CPA, MAA (Platform), MAA (Coordination) and the MNLA/HCUA/MAA (Platform) joint troops. The 4 new schools have just been added to the list of 10 schools already occupied by MNLA, CPA, MAA (Coordination) and HCUA in the three regions, including Kidal.

104. In December 2014, a MINUSMA contingent moved out of a vocational training centre that it had occupied since 2013. This situation was likely to infringe on the right to education of children in northern Mali.

105. The Independent Expert recalls the essential nature of this right, on which all other rights depend, and notes the progress made in the situation. The start of the school year in October 2014 was largely observed in the various regions of northern Mali despite differences in approaches. The schools in the town of Kidal reopened with curricula that are different from those followed throughout the rest of the country. In the town of Kidal, the lessons offered are focused on religion, which is a reflection of the decline of secularism in this part of the country.

106. However, challenges remain, including a lack of safety, which strongly discourages students from going to schools when they are not occupied by armed groups. Many families in Kidal have chosen to send their children to Bamako or neighbouring countries to ensure their access to education.

IV. Conclusions and recommendations

A. Conclusions

107. **The situation in northern Mali has deteriorated considerably, and the progress observed by the Independent Expert during his second mission, in February 2014, in terms of strengthening State authority, deploying the administration in the north and combating impunity has been called into question as a result of the fighting that broke out in Kidal from 16 to 21 May 2014. There is a genuine before and after mid-May 2014 in Mali, as the events in Kidal have contributed to moving political lines by altering the power struggle between the Government and rebel groups.**

108. **This has had a significant impact on the situation of human rights in the country. There is a striking contrast between the marked decrease in cases of violations of the right to life attributable to Malian armed forces and the significant increase in serious violations of human rights and international humanitarian law committed by armed groups in the north of the country. The rape of minors by some members of the Malian armed forces is the main concern.**

109. **Extremist armed groups present in the north of Mali have been involved in serious human rights violations, including violations of the right to life, cruel, inhuman or degrading treatment, abductions, unlawful detention, recruitment and use of children by armed groups, suicide and asymmetrical attacks and looting.**

110. **The ongoing political dialogue in Algiers carries with it the seeds for a negotiated solution to the Malian crisis provided that this is not to the detriment of victims of serious human rights violations. There is an African proverb which goes: when elephants fight, the grass (reeds) gets hurt. In the case of Mali, the grass symbolizes the victims who have paid a high price during the crisis and feel excluded from political and judicial processes that are favouring the very political players who are the cause of their troubles.**

B. Recommendations

111. **The independent expert recommends that the Malian authorities should:**

(a) Provide the State with the necessary means to protect civilians from attacks by armed groups in accordance with human rights and international humanitarian law;

(b) Create a political environment that is conducive to the effective and sustainable return of State authority to the northern regions in order to facilitate people's access to basic social services and bring about economic progress in these regions;

(c) Strengthen the fight against impunity by precluding any amnesty for international crimes, including sexual violence and the recruitment of children into armed groups, and continue to cooperate with the International Criminal Court, in accordance with the Rome Statute;

(d) Adopt a decree to bring into force Act No. 2012-025 of 12 July 2012 on Compensation of Victims of the Rebellion of 17 January 2012 and the Insurrectionary Movement of 22 March 2012;

(e) Meet the requests of the association of parents and spouses of the "red beret" soldiers killed on duty, in particular the request for funerals to be arranged,

through strong symbolic measures, individually or as a group, and material assistance to be provided to the families of the victims;

(f) Finalize the ongoing initiatives for the establishment of mobile counselling centres to expedite legal proceedings in the north of the country, reform the National Human Rights Commission to bring it into line with international standards and appoint members of the Truth, Justice and Reconciliation Commission in a transparent manner with due respect for their independence;

(g) Undertake reform of the security sector, in particular the army, the police, the gendarmerie and State security services;

(h) Facilitate access of the International Committee of the Red Cross and the Human Rights Division of MINUSMA to persons detained by the intelligence services;

(i) Give clear orders through chains of command and codes of conduct (or their equivalent) to preclude security forces and armed groups from committing sexual violence;

(j) Ensure that victims of sexual violence have access to legal and medical services, including HIV/AIDS treatment, and psychosocial rehabilitation;

(k) Strengthen the legal framework for combating slavery by enacting a law that criminalizes traditional and contemporary forms of slavery.

112. **The Independent Expert recommends that the armed groups should:**

(a) Cease attacks on civilians;

(b) Respect the humanitarian space and facilitate the access of humanitarian workers to populations in need of assistance and protection;

(c) End the recruitment and use of children by armed groups and facilitate the release and reintegration of children who are still within their ranks.

113. **The Independent Expert recommends that the international community should:**

(a) Ensure that the United Nations and its Member States do not endorse any peace agreement on the crisis in Mali which provides for amnesty for international crimes such as genocide, crimes against humanity, war crimes and serious human rights violations, including sexual violence and gender-based violence;

(b) Provide financial support and technical assistance for the Government's efforts to strengthen the capacity of the Malian judicial system with a view to collecting evidence regarding the crimes committed in the north of Mali by armed groups and Malian armed forces;

(c) Support Malian initiatives in the area of security sector reform.